

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

DEC 31 2018

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FILED	DEC 31 2018

RECEIVED IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT **CLERK**

WARREN HAVENS,
individually and as assignee,

Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

18-1343
No. 18-_____

NOTICE OF APPEAL

Pursuant to 47 U.S.C. §§ 402 (b); 28 U.S.C. §§ 2343 and 2344; 28 U.S.C. §158; and Rule 15(a) the Federal Rules Appellate Procedure, Warren Havens (see accompanying Appellant and Corporate Disclosure Statement) (“Appellant” or “Havens”), on a *pro se* basis at this time, hereby appeals to this Court an order the Federal Communications Commission (the “Commission”), the *Memorandum Opinion and Order*, FCC 18-168, released on November 29, 2018 (the “Order”). A copy of the Order is attached as Exhibit A.

The Order involves adjudication decisions, but Appellant also alleges as indicated below that it involves *ultra vires* rule changes and other *ultra vires*

actions, and thus submitted on December 27, 2018 a Petition for Review of the Order under 47 U.S.C. § 402(a).¹

Venue is proper in this Court pursuant to 28 U.S.C. 2343.

Appellant submits this Appeal in the context of the FCC Office of General Counsel declining to enter a stipulation with him regarding certain additional review by the FCC of the Order that Appellant may pursue, rights to which Appellant at this time reserves.

In the Order, the Commission, among other things: (1) in the text of the Order, agreed with or accepted some aspects of Appeals and requests of Appellant Warren Havens and the “Havens companies” described in the Order (the “Companies”) on the matters at issue (in the relevant aspects of the captioned proceeding), (2) in the text and order-clauses section of the Order, denied and

¹ In *Tribune Co. v. F.C.C.*, 133 F.3d 61, 328 U.S. App. D.C. 198 (1998), this DC Circuit Court explained: “4. Tribune... appealed the Commission's order ...pursuant to § 402(b), and... petitioned for review of that order ...pursuant to 47 U.S.C. § 402(a)....[A] claim directed to the same matters may be brought only under one of the two provisions.” In this Appeal filing and the December 27, 2018 Petition, Appellant/ Petitioner does not bring the *same* claims directed to the *same* matters before the DC Circuit Court, but brings *different* claims on *different* matters under the Order. Also, in *Scripps-Howard Radio v. FCC*, 316 U.S. 4 (1942), the US Supreme Court compared orders reviewable under section 402(a) and section 402(b). The Court examined the legislative history of the Communications Act and concluded that the difference between the two sections had no relation to the scope of the judicial function the courts were to perform, and that Congress provided the two roads to judicial review only to save a licensee the inconvenience of litigating an appeal in Washington DC in situations where the Commissioner's order arose out of a proceeding not instituted by the licensee.

dismissed as to some, and avoided and failed to address as to other, appeals and requests of Havens and the Companies on matters at issue, (3) failed to conform with past decisions of the Commission or its delegated authorities (together, the “FCC”) in favor of Havens and the Companies which should change the Order’s descriptions and conclusions, (4) *sua sponte* reopens decisions of the FCC made years earlier not relevant to the matters at issue of the Order, (5) *sua sponte* ordered an “inquiry” as to Havens and Companies on decided past matters before the FCC, on past matters not before the FCC, and on unknown undefined possible future matters before or not before the FCC, and (6) pending the “inquiry,” orders that the Companies’ FCC licenses may be assigned on Commission-preferred, pre-cleared basis to unnamed private for-profit and public railroads, skewing the competitive marketplace.

Appellant Warren Havens (see definition in the accompanying Appellant and Corporate Disclosure Statement) is a principal subject of the Order and its underlying actions indicated herein. As described herein, Appellant is aggrieved by the Order, with economic, First Amendment, and other interests and rights affected, and has standing to challenge the Order by this Appeal including under 47 U.S.C. § 402. See, e.g., *FCC v. Sanders Brothers*, 309 U.S. 470 (1940); *Scripps-Howard Radio v. FCC*, 316 U.S. 4 (1942).

Appellant appeals the parts of the Order indicated above in the numbered list (except for those parts indicated there are in his favor) for which he is aggrieved under 47 U.S.C. §402(b): (i) on the grounds that these parts of the Order are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, and is *ultra vires*, and is in substantial part time barred; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute; and (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court; and is subject to the rule of prejudicial error; and (ii) to determine if matters under this Appeal should be transferred to a United States District Court under 28 U.S. Code §§ 2347, 1631, 158(a) or under other basis.

To the extent these matters are not transferred to a District Court, Appellant requests that this Court hold them unlawful and grant other just relief.

Underlying the Order and among these grievances are the following. By the above summarized aspects of the Order in the numbered list (except for the aspects in Appellant's favor, indicated in item '(1)'), and with associated past FCC action and inaction, the FCC threatens, chills and curtails "whistleblowing" and First Amendment Appeal exercise by Appellant in violation and deprivation of rights

protected under the U.S. Constitution and various U.S.C. statutes and public policy to protect lawful private interests in FCC licenses of Havens and the Companies, and to protect core purposes of the Federal Communications Act, 47 U.S.C. §151 et seq. (the “Act”) and application of its relevant sections and related FCC rules.

This involved, among other things, the FCC repeatedly, for years, to over a decade as to some of following, avoiding and taking no action on Appeals with ample evidence and legal arguments repeatedly submitted by Havens and the Companies: (a) That showed FCC *ultra vires* rule changes of core license auction rules mandated under the Act in 47 USC §309(j) (regarding small-company designated-entity bidding and payment credits) that skewed the FCC’s license auctions since the *ultra vires* rule changes commenced in Auction 61 in years 2005-2006; (b) That showed in the subject FCC proceedings and related bankruptcy case proceedings the destruction, concealment, avoidance and suppression of critical evidence, including as meant in 18 U.S.C. §1519, that skewed the results; (c) That showed that the former FCC Administrative Law Judge Richard Sippel (“ALJ”) in his order FCC 15M-14 that is the subject of the Order (apart from Order’s *sua sponte* and other new matters indicated above), for one of FCC 15M-14’s two conclusions, devised and applied an *ultra vires* change of FCC rule 1.251(f)(3) that, in addition, was never enacted with the required public notice and comment mandated under the Federal Administrative Procedure

Act; (d) That showed that the ALJ and the Enforcement Bureau refused to accept and process scores of boxes of files that comprised the core evidence at issue in the subject proceeding which, at large cost, Havens and the Companies found, secured by a court order, and made available under an ALJ order to do so; (e) That showed that, with no authority from the Commission, the Enforcement Bureau abandoned its duty the Commission assigned in its Order FCC 11-64 to prosecute the accused company (and its officers and agents) shown in the caption of the Order, and instead advocated and represented the interests of the accused company and persons, using extensive federal public funds and resources for this private party purpose, and leaving Havens and the two Companies that were active in the proceeding to prosecute the case set out in FCC 11-64 at the critical times of preparation for the trial, during the trial, and for post-trial submissions the ALJ ordered (proposed findings of facts), and while the proceeding was abandoned by FCC trial staff, the ALJ still continued with decided it, as if properly tried. After this, the ALJ issued the above-noted order FCC 15M-14, subject of the Order, with accusations, contrary to the relevant facts and law, of Havens and the all of the Companies (but only two were active) for their participation in the proceeding (which the official record shows largely succeeded with the Commissions' goals in FCC 11-64) and without required fair warning under due process; (f) That showed that said accused company (and its officers and agents) used extensive false

statements and perjury to keep a set of nationwide licenses for decades that had “automatically terminated,” and after eventual admissions to the FCC demonstrating most all of that, the FCC took no action to sanction this wrongdoing; And (g) That showed, to no avail, that the same company and its affiliates failed to meet the required “construction”-“substantial service” requirement and deadline for its other licenses, covering much of the nation, obtained in Auction 61 with the false bidding credit noted above.

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Respectfully submitted,

December 31, 2018,

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Warren Havens, pro se
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**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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individually and as assignee,

Appellant,

v.

FEDERAL COMMUNICATIONS
COMMISSION
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Respondents.

No. 18- _____

**APPELLANT AND
CORPORATE DISCLOSURE STATEMENT**

1. Appellant Warren Havens is an individual US Citizen over the age of 21 described in the Order described in the accompanying Appeal for Review. Appellant is also assignee of economic interests and associated claims against the FCC subject of the Order held by the following Delaware formed and domiciled legal entities, which obtained the claims originally from Havens (said assignments were made in accord with holdings in *Sprint Communs. Co., L.P. v. APCC Servs.*, 554 U.S. 269): Polaris PNT PBC; Polaris PNT 1, PB LLC; Polaris PNT 2, PB LLC; and Polaris PNT 3, PB LLC (each of these four is a statutory public benefit entity). In the Appeal, “Warren Havens” and “Appellant” mean Warren Havens individually and as the assignee described above.

2. Pursuant to D.C. Circuit Rule 26.1 and Federal Rule of Appellate Procedure 26.1, Appellant Warren Havens submits the following corporate disclosure statement as to the four “Polaris” legal entities described above:

Polaris PNT PBC; Polaris PNT 1, PB LLC; Polaris PNT 2, PB LLC; and Polaris PNT 3, PB LLC: (i) each is owned and controlled in full by Warren Havens individually, subject to assignments of certain non-controlling economic interests and claims, and (ii) in each, no publicly held company owns any of its stock or equivalent ownership interests.

Respectfully submitted,

December 31, 2018,

A handwritten signature in black ink, appearing to read "Warren Havens", written over a horizontal blue line.

Warren Havens, pro se
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Berkeley CA 94704

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of December 2018, I served the foregoing Notice of Appeal, and Appellant and Corporate Disclosure Statement, upon the parties listed below by first-class mail, postage prepaid, and by electronic mail (as indicated by asterisk):

FEDERAL COMMUNICATIONS COMMISSION

Thomas M. Johnson, Jr.*

General Counsel

Federal Communications Commission

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Washington, D.C. 20554

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With a courtesy copy to:

David Senzel*

FCC Office of General Counsel

David.Senzel@fcc.gov

UNITED STATES OF AMERICA

Matthew G. Whitaker

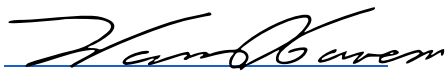
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